

By: Anchia

H.B. No. 1883

A BILL TO BE ENTITLED

AN ACT

relating to licensing and regulation of massage and bodywork
therapies; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 455, Occupations Code, is
amended to read as follows:

CHAPTER 455. MASSAGE AND BODYWORK THERAPIES [~~THERAPY~~]

SECTION 2. Sections 455.001(3), (4), (5), (6), (7), (8),
(9), and (11), Occupations Code, are amended to read as follows:

(3) "Instructor" means a person who instructs a
student in any section of the course of instruction required for a
massage and bodywork therapist license.

(4) "Internship program" means a program supervised by
a massage and bodywork therapies [~~therapy~~] instructor in which a
student provides massage and bodywork therapies [~~therapy~~] to the
public.

(5) "Massage and bodywork establishment" means a place
of business that advertises or offers massage and bodywork
therapies [~~therapy~~] or other massage services. The term includes a
place of business that advertises or offers any service described
by a derivation of the terms "massage therapy," "bodywork," or
"other massage services."

(6) "Massage and bodywork school" means an entity
that:

1 (A) teaches at a minimum the course of
2 instruction required for a massage and bodywork therapist license;
3 and

4 (B) has at least two instructors.

5 (7) "Massage and bodywork therapist" means a person
6 who practices or administers massage and bodywork therapies
7 [~~therapy~~] or other massage services to a client for compensation.
8 The term includes a licensed massage and bodywork therapist,
9 therapeutic massage practitioner, massage technician, masseur,
10 masseuse, myotherapist, body massager, body rubber, or any
11 derivation of those titles.

12 (8) "Massage and bodywork therapies [~~therapy~~]" means
13 the manipulation of soft tissue by physical contact [~~hand~~] or
14 through a mechanical or electrical apparatus for the purpose of
15 body massage and includes effleurage (stroking), petrissage
16 (kneading), tapotement (percussion), compression, vibration,
17 friction, nerve strokes, [~~and~~] Swedish gymnastics, somatic
18 therapy, bodywork, and hydrotherapy. The terms "massage,"
19 "therapeutic massage," "massage technology," "myotherapy," "body
20 massage," "body rub," and "bodywork," or any derivation of those
21 terms, are synonyms for "massage and bodywork therapies [~~therapy~~]."

22 (9) "Massage and bodywork therapies [~~therapy~~]
23 instructor" means a licensed massage and bodywork therapist who
24 provides to one or more students instruction approved by the
25 department in massage and bodywork therapies [~~therapy~~].

26 (11) "Other massage services" include any services
27 offered or performed for compensation at a massage and bodywork

1 establishment that involve physical contact with a client, and may
2 include the use of oil, lubricant, salt glow, a heat lamp, a hot and
3 cold pack, or a tub, shower, jacuzzi, sauna, steam, or cabinet bath.

4 SECTION 3. The heading to Section 455.002, Occupations Code,
5 is amended to read as follows:

6 Sec. 455.002. MASSAGE AND BODYWORK THERAPIES [~~THERAPY~~] AS
7 HEALTH CARE SERVICE.

8 SECTION 4. Section 455.002(a), Occupations Code, is amended
9 to read as follows:

10 (a) Massage and bodywork therapies constitute [~~therapy~~
11 ~~constitutes~~] a health care service if the massage and bodywork
12 therapies are [~~therapy is~~] for therapeutic purposes. Massage and
13 bodywork therapies do [~~therapy does~~] not constitute the practice of
14 chiropractic.

15 SECTION 5. Section 455.003, Occupations Code, is amended to
16 read as follows:

17 Sec. 455.003. PRACTICES INCLUDED IN MASSAGE AND BODYWORK
18 THERAPIES [~~THERAPY~~]. Massage and bodywork therapies include
19 [~~therapy includes~~] the use of oil, salt glows, heat lamps, hot and
20 cold packs, and tub, shower, or cabinet baths.

21 SECTION 6. Section 455.004, Occupations Code, is amended to
22 read as follows:

23 Sec. 455.004. APPLICABILITY OF CHAPTER. This chapter does
24 not apply to:

25 (1) a person licensed in this state as a physician,
26 chiropractor, occupational therapist, physical therapist, nurse,
27 cosmetologist, or athletic trainer or as a member of a similar

1 profession subject to state licensing while the person is
2 practicing within the scope of the license;

3 (2) a school approved by the Texas Education Agency or
4 otherwise approved by the state; or

5 (3) an instructor otherwise approved by the state to
6 teach in an area of study included in the required course of
7 instruction for issuance of a massage and bodywork therapist
8 license.

9 SECTION 7. Sections 455.005(a), (b), and (c), Occupations
10 Code, are amended to read as follows:

11 (a) Except as provided by Subsection (b), this chapter
12 supersedes any regulation adopted by a political subdivision of
13 this state relating to the licensing or regulation of massage and
14 bodywork therapists.

15 (b) This chapter does not affect a local regulation that:

16 (1) relates to zoning requirements or other similar
17 regulations for massage and bodywork establishments;

18 (2) authorizes or requires an investigation into the
19 background of an owner or operator of, or an investor in, a massage
20 and bodywork establishment; or

21 (3) does not relate directly to the practice of
22 massage and bodywork therapies [~~therapy~~] as performed by a licensed
23 massage and bodywork therapist, including a regulation related to a
24 license holder listed in Section 455.004, while the therapist:

25 (A) performs under the applicable licensing law;

26 and

27 (B) works with a licensed massage and bodywork

1 therapist.

2 (c) Except as provided by Chapter 243, Local Government
3 Code, a political subdivision may not adopt a regulation of the type
4 described by Subsection (b) that is more restrictive for massage
5 and bodywork therapists or massage and bodywork establishments than
6 for other health care professionals or establishments.

7 SECTION 8. Section 455.052, Occupations Code, is amended to
8 read as follows:

9 Sec. 455.052. RULES REGARDING MASSAGE AND BODYWORK
10 ESTABLISHMENTS. Rules adopted under this chapter relating to a
11 massage and bodywork establishment must contain minimum standards
12 for:

13 (1) the issuance, denial, renewal, suspension,
14 revocation, or probation of a license under this chapter;

15 (2) the qualifications of professional personnel;

16 (3) the supervision of professional personnel;

17 (4) the equipment essential to the health and safety
18 of massage and bodywork establishment personnel and the public;

19 (5) the sanitary and hygienic conditions of a massage
20 and bodywork establishment;

21 (6) the provision of massage and bodywork therapies
22 [~~therapy~~] or other massage services by a massage and bodywork
23 establishment;

24 (7) the records kept by a massage and bodywork
25 establishment;

26 (8) the organizational structure of a massage and
27 bodywork establishment, including the lines of authority and the

1 delegation of responsibility;

2 (9) fire prevention and safety in a massage and
3 bodywork establishment;

4 (10) the inspection of a massage and bodywork
5 establishment; and

6 (11) any other aspect of the operation of a massage and
7 bodywork establishment necessary to protect massage and bodywork
8 establishment personnel or the public.

9 SECTION 9. Section 455.053, Occupations Code, is amended to
10 read as follows:

11 Sec. 455.053. RULES REGARDING MASSAGE AND BODYWORK SCHOOLS.
12 Rules adopted under this chapter relating to a massage and bodywork
13 school must contain minimum standards for:

14 (1) the issuance, denial, renewal, suspension,
15 revocation, or probation of a license under this chapter;

16 (2) the qualifications of professional personnel;

17 (3) the supervision of professional personnel;

18 (4) the equipment essential to the education, health,
19 and safety of students, massage and bodywork school personnel, and
20 the public;

21 (5) the sanitary and hygienic conditions of a massage
22 and bodywork school;

23 (6) the provision of massage and bodywork therapies
24 [~~therapy~~] or other massage services by a massage and bodywork
25 school or student;

26 (7) the maximum number of hours a student may
27 accumulate in a massage and bodywork school's internship program

1 before the student is required to be licensed under this chapter;

2 (8) the educational and clinical records kept by a
3 massage and bodywork school;

4 (9) the organizational structure of a massage and
5 bodywork school, including the lines of authority and the
6 delegation of responsibility;

7 (10) fire prevention and safety in a massage and
8 bodywork school;

9 (11) the massage and bodywork school's curriculum and
10 educational material;

11 (12) massage and bodywork school inspections; and

12 (13) any other aspect of the operation of a massage and
13 bodywork school that the executive commissioner considers
14 necessary to protect students, massage and bodywork school
15 personnel, or the public.

16 SECTION 10. Section 455.054, Occupations Code, is amended
17 to read as follows:

18 Sec. 455.054. RULES REGARDING MASSAGE AND BODYWORK
19 THERAPISTS. Rules adopted under this chapter relating to a massage
20 and bodywork therapist must contain minimum standards for:

21 (1) the issuance, denial, renewal, suspension,
22 revocation, or probation of a license under this chapter;

23 (2) the qualifications of a massage and bodywork
24 therapist;

25 (3) the sanitary and hygienic conditions of the
26 physical environment in which a massage and bodywork therapist
27 practices massage and bodywork therapies [~~therapy~~];

1 (4) the records kept by a massage and bodywork
2 therapist;

3 (5) the inspection of the records, equipment, and
4 sanitary and hygienic conditions of the physical environment used
5 by a massage and bodywork therapist in practicing massage and
6 bodywork therapies [~~therapy~~]; and

7 (6) any other aspect of the practice of a massage and
8 bodywork therapist necessary to protect the public.

9 SECTION 11. Section 455.055, Occupations Code, is amended
10 to read as follows:

11 Sec. 455.055. RULES REGARDING MASSAGE AND BODYWORK
12 THERAPIES [~~THERAPY~~] INSTRUCTORS. Rules adopted under this chapter
13 relating to a massage and bodywork therapies [~~therapy~~] instructor
14 must contain minimum standards for:

15 (1) the issuance, denial, renewal, suspension,
16 revocation, or probation of a license under this chapter;

17 (2) the qualifications of a massage and bodywork
18 therapies [~~therapy~~] instructor;

19 (3) the supervision of a student by a massage and
20 bodywork therapies [~~therapy~~] instructor;

21 (4) the maximum number of hours a student may
22 accumulate in an internship program under the supervision of a
23 massage and bodywork therapies [~~therapy~~] instructor before the
24 student is required to be licensed under this chapter;

25 (5) the equipment essential to the education, health,
26 and safety of students and the public;

27 (6) the sanitary and hygienic conditions of the

1 physical environment in which a massage and bodywork therapies
2 [~~therapy~~] instructor teaches;

3 (7) the provision of massage and bodywork therapies
4 [~~therapy~~] or other massage services by a student or a massage and
5 bodywork therapies [~~therapy~~] instructor;

6 (8) the educational and clinical records kept by a
7 massage and bodywork therapies [~~therapy~~] instructor;

8 (9) the curriculum taught and educational material
9 used by a massage and bodywork therapies [~~therapy~~] instructor;

10 (10) the inspection of the records, equipment, and
11 physical environment of a massage and bodywork therapies [~~therapy~~]
12 instructor; and

13 (11) any other aspect of a massage and bodywork
14 therapies [~~therapy~~] instructor's instruction or operation of any
15 portion of the course of instruction required for a massage and
16 bodywork therapist license.

17 SECTION 12. Section 455.101, Occupations Code, is amended
18 to read as follows:

19 Sec. 455.101. GENERAL DUTIES OF DEPARTMENT. The department
20 shall:

21 (1) administer this chapter;

22 (2) investigate a person who may be engaging in a
23 practice that violates this chapter;

24 (3) regulate the number and content of school hours
25 provided by a massage and bodywork school or a massage and bodywork
26 therapies [~~therapy~~] instructor; and

27 (4) prepare and administer a state examination under

1 this chapter.

2 SECTION 13. Section 455.103, Occupations Code, is amended
3 to read as follows:

4 Sec. 455.103. MEMORANDUM OF UNDERSTANDING REGARDING
5 MASSAGE AND BODYWORK SCHOOLS. (a) The department may enter into a
6 memorandum of understanding with the Texas Education Agency to
7 regulate massage and bodywork schools.

8 (b) A memorandum must:

9 (1) be adopted by rule; and

10 (2) limit the total amount of the fees charged by the
11 department and the Texas Education Agency for licensing a massage
12 and bodywork school to an amount equal to the amount of the fees the
13 department would charge for licensing the massage and bodywork
14 school in the absence of the memorandum.

15 SECTION 14. Section 455.104, Occupations Code, is amended
16 to read as follows:

17 Sec. 455.104. INSPECTIONS; INVESTIGATIONS. (a) The
18 department, ~~or~~ its authorized representative, or a peace officer
19 may enter the premises of an applicant for a license or a license
20 holder at:

21 (1) reasonable times to conduct an inspection
22 incidental to the issuance of a license; and

23 (2) other times that the department or peace officer
24 considers necessary to ensure compliance with this chapter and the
25 rules adopted under this chapter.

26 (b) A peace officer appointed or employed by a law
27 enforcement agency of a political subdivision of this state may

1 enter the premises of a massage and bodywork establishment to
2 ensure compliance with this chapter and rules adopted under this
3 chapter.

4 SECTION 15. Subchapter C, Chapter 455, Occupations Code, is
5 amended by adding Section 455.1041 to read as follows:

6 Sec. 455.1041. WARRANT. On finding probable cause to
7 justify an administrative search, a court may issue a warrant to
8 authorize the search of a massage and bodywork establishment,
9 including the inspection of records required to be kept under
10 Section 455.202.

11 SECTION 16. Section 455.105(a), Occupations Code, is
12 amended to read as follows:

13 (a) The department shall annually prepare a registry of:
14 (1) licensed massage and bodywork therapists;
15 (2) licensed massage and bodywork therapies
16 instructors;
17 (3) licensed massage and bodywork schools;
18 (4) licensed massage and bodywork establishments; and
19 (5) continuing education programs recognized by the
20 department.

21 SECTION 17. Section 455.151, Occupations Code, is amended
22 to read as follows:

23 Sec. 455.151. LICENSE REQUIRED. (a) Unless the person is
24 exempt from the licensing requirement, a person may not act as a
25 massage and bodywork therapist, massage and bodywork school,
26 massage and bodywork therapies [~~therapy~~] instructor, or massage and
27 bodywork establishment unless the person holds an appropriate

1 license issued under this chapter.

2 (b) Unless the person is exempt from the licensing
3 requirement, a person may not represent that the person is a massage
4 and bodywork therapist, massage and bodywork school, massage and
5 bodywork therapies instructor, or massage and bodywork
6 establishment unless the person holds an appropriate [a] license
7 under this chapter.

8 (c) A person may not for compensation perform or offer to
9 perform any service with a purported health benefit that involves
10 physical contact with a client unless the person:

11 (1) holds an appropriate license issued under this
12 chapter; or

13 (2) is licensed or authorized under other law to
14 perform the service.

15 (d) A business that uses the word "spa" in its name or in an
16 advertisement may not perform or offer to perform, or employ a
17 person who performs or offers to perform, massage and bodywork
18 therapies or other massage services unless the business holds a
19 license as a massage and bodywork establishment.

20 SECTION 18. Section 455.152, Occupations Code, is amended
21 to read as follows:

22 Sec. 455.152. INELIGIBILITY FOR LICENSE. (a) A person is
23 not eligible for a license as a massage and bodywork establishment,
24 massage and bodywork school, massage and bodywork therapist, or
25 massage and bodywork therapies [~~therapy~~] instructor if the person
26 is an individual and has been convicted of, entered a plea of nolo
27 contendere or guilty to, or received deferred adjudication for an

1 offense involving prostitution or another sexual offense.

2 (b) A person convicted of a violation of this chapter is
3 ineligible for a license as a massage and bodywork establishment,
4 massage and bodywork school, massage and bodywork therapist, or
5 massage and bodywork therapies [~~therapy~~] instructor until the fifth
6 anniversary of the date of the conviction.

7 SECTION 19. Section 455.154(a), Occupations Code, is
8 amended to read as follows:

9 (a) The holder of a license may exercise all professional
10 rights, honors, and privileges relating to the practice of massage
11 and bodywork therapies [~~therapy~~].

12 SECTION 20. Section 455.155, Occupations Code, is amended
13 to read as follows:

14 Sec. 455.155. LICENSE EXEMPTION. (a) Section 455.151 does
15 not apply to an establishment or person that:

16 (1) holds a license, permit, certificate, or other
17 credential issued by this state under another law; and

18 (2) offers or performs massage and bodywork therapies
19 [~~therapy~~] under the scope of that credential.

20 (b) A licensed massage and bodywork therapist who practices
21 as a solo practitioner is not required to hold a license as a
22 massage and bodywork establishment.

23 (c) A place of business is not required to hold a license as
24 a massage and bodywork establishment if:

25 (1) the place of business is licensed as a massage and
26 bodywork school;

27 (2) the place of business is owned by the federal

1 government, the state, or a political subdivision of the state;

2 (3) at the place of business, a licensed massage and
3 bodywork therapist practices as a solo practitioner and:

4 (A) does not use a business name or assumed name;
5 or

6 (B) uses a business name or an assumed name and
7 provides the massage and bodywork therapist's full legal name or
8 license number in each advertisement and each time the business
9 name or assumed name appears in writing;

10 (4) at the place of business, an acupuncturist,
11 athletic trainer, chiropractor, cosmetologist, midwife, nurse,
12 occupational therapist, perfusionist, physical therapist,
13 physician, physician assistant, podiatrist, respiratory care
14 practitioner, or surgical assistant licensed or certified in this
15 state employs or contracts with a licensed massage and bodywork
16 therapist to provide massage and bodywork therapies as part of the
17 person's practice; or

18 (5) at the place of business, a person offers to
19 perform or performs massage and bodywork therapies:

20 (A) for not more than 72 hours in any six-month
21 period; and

22 (B) as part of a public or charity event, the
23 primary purpose of which is not to provide massage and bodywork
24 therapies. ~~[The executive commissioner by rule shall provide for a~~
25 ~~fair and reasonable procedure to grant exemptions from the~~
26 ~~licensing requirements of this chapter. The rules must provide~~
27 ~~that a person is exempt if the person shows that the advertising or~~

1 ~~provision of massage therapy services is incidental to the person's~~
2 ~~primary enterprise.]~~

3 (d) A sexually oriented business may not:

4 (1) hold a license under this chapter; or

5 (2) operate as a massage and bodywork establishment
6 under this chapter.

7 SECTION 21. Section 455.156, Occupations Code, is amended
8 to read as follows:

9 Sec. 455.156. LICENSE REQUIREMENTS FOR MASSAGE AND BODYWORK
10 THERAPIST. (a) The department shall issue a license to each
11 qualified applicant who applies for a massage and bodywork
12 therapist license.

13 (b) An applicant for a license under this section must be an
14 individual and:

15 (1) present evidence satisfactory to the department
16 that the person[+

17 [~~(A)~~] has satisfactorily completed massage and
18 bodywork therapies [~~therapy~~] studies in a 500-hour [~~300-hour~~],
19 supervised course of instruction provided by a massage and bodywork
20 therapies [~~therapy~~] instructor, a licensed massage and bodywork
21 school, a state-approved educational institution, or any
22 combination of instructors or schools, in which at least:

23 (A) 240 [~~(i) 125~~] hours are taught by an
24 instructor approved by the department and dedicated to the study of
25 [~~Swedish~~] massage therapy techniques and bodywork assessment,
26 theory, and application [~~and taught by a massage therapy~~
27 ~~instructor~~];

1 (B) 125 [~~(ii) 50~~] hours are dedicated to the
2 study of anatomy, physiology, kinesiology, and body systems;

3 (C) 40 [~~(iii) 25~~] hours are dedicated to the
4 study of pathology [~~physiology~~];

5 (D) [~~(iv) 15 hours are dedicated to the study of~~
6 ~~hydrotherapy;~~

7 (v)] 15 hours are dedicated to the study of
8 business practices;

9 (E) 10 hours are dedicated to the study of the law
10 applicable to massage and bodywork therapies, health care, and
11 professional ethics standards;

12 (F) [~~(vi)~~] 20 hours are dedicated to the study of
13 health, [and] hygiene, first aid, and cardiopulmonary
14 resuscitation (CPR); and

15 (G) [~~(vii)~~] 50 hours are spent in an internship
16 program approved by the department; [or

17 (B) has practiced massage therapy as a
18 profession for not less than five years in another state or country
19 that the department determines does not maintain standards and
20 requirements of practice and licensing or registration that
21 substantially conform to the standards and requirements of this
22 state,]

23 (2) pass a [~~the practical and written portions of the~~]
24 state examination approved by the department;

25 (3) pass a Texas jurisprudence examination approved by
26 the department; and

27 (4) [~~(3)~~] be at least 18 years of age.

1 (c) If the department requires a practical examination, it
2 shall offer the practical examination in at least five separate
3 locations across the state.

4 SECTION 22. Section 455.1571, Occupations Code, is amended
5 to read as follows:

6 Sec. 455.1571. APPLICANT LICENSED IN ANOTHER
7 JURISDICTION. (a) The department may waive any prerequisite to
8 obtaining a license for an applicant for licensing as a massage and
9 bodywork therapist or massage and bodywork therapies [~~therapy~~]
10 instructor after reviewing the applicant's credentials and
11 determining that the applicant holds a license or certificate of
12 registration issued by another jurisdiction that has licensing or
13 registration requirements substantially equivalent to those of
14 this state.

15 (b) The department may waive any prerequisite to obtaining a
16 license for an applicant for licensing as a massage and bodywork
17 therapist or massage and bodywork therapies [~~therapy~~] instructor
18 who holds a license or certificate of registration issued by
19 another jurisdiction with which this state has a reciprocity
20 agreement. The department may make an agreement, subject to the
21 approval of the governor, with another state to allow for licensing
22 by reciprocity.

23 SECTION 23. Section 455.158, Occupations Code, is amended
24 to read as follows:

25 Sec. 455.158. STUDENT EXEMPTION FROM LICENSING
26 REQUIREMENTS. A student who provides massage and bodywork
27 therapies [~~therapy~~] as part of an internship program or without

1 compensation is exempt from licensing under this chapter if the
2 student is enrolled in a state-approved course of instruction that
3 consists of at least 500 [~~300~~] hours.

4 SECTION 24. Section 455.159, Occupations Code, is amended
5 to read as follows:

6 Sec. 455.159. STUDENT INTERNSHIP PROGRAM. (a) An
7 internship program must:

8 (1) meet the qualifications established by the
9 department;

10 (2) provide a student with a minimum of 40 hours of
11 hands-on massage and bodywork therapies [~~therapy~~] experience; and

12 (3) be conducted on the school grounds or in a clinic
13 or classroom setting provided by the massage and bodywork school or
14 massage and bodywork therapies [~~therapy~~] instructor.

15 (b) A student must complete the first 450 [~~250~~] hours of
16 required training at a massage and bodywork school or with a massage
17 and bodywork therapies [~~therapy~~] instructor before the student is
18 eligible to enter an internship program.

19 (c) A student who is participating in an internship program
20 must be under the supervision and direction of a massage and
21 bodywork therapies [~~therapy~~] instructor during the hours that the
22 student is working in the program.

23 (d) A student who is participating in an internship program
24 may:

25 (1) make an appointment with a client;

26 (2) interview a client;

27 (3) provide massage and bodywork therapies [~~therapy~~],

1 including providing massage and bodywork therapies [~~therapy~~] for
2 compensation in an amount set by the massage and bodywork school or
3 massage and bodywork therapies [~~therapy~~] instructor and paid to the
4 school or instructor;

5 (4) collect and review a client evaluation with the
6 student's supervisor; and

7 (5) perform other tasks necessary to the business of
8 providing massage and bodywork therapies [~~therapy~~] to the public.

9 SECTION 25. Section 455.201, Occupations Code, is amended
10 to read as follows:

11 Sec. 455.201. REFERRAL FROM PHYSICIAN. A person issued a
12 license may receive referrals from a physician to administer
13 massage and bodywork therapies [~~therapy~~].

14 SECTION 26. The heading to Section 455.202, Occupations
15 Code, is amended to read as follows:

16 Sec. 455.202. PRACTICE BY MASSAGE AND BODYWORK
17 ESTABLISHMENT.

18 SECTION 27. Sections 455.202(a), (b), and (c), Occupations
19 Code, are amended to read as follows:

20 (a) A massage and bodywork establishment may employ only
21 licensed massage and bodywork therapists to perform massage and
22 bodywork therapies [~~therapy~~] or other massage services.

23 (b) A massage and bodywork establishment may not:

24 (1) employ an individual who is not a United States
25 citizen or a legal permanent resident with a valid work permit;

26 (2) employ a minor unless the minor's parent or legal
27 guardian authorizes in writing the minor's employment by the

1 establishment;

2 (3) allow a nude or partially nude employee to provide
3 massage and bodywork therapies [~~therapy~~] or other massage services
4 to a customer;

5 (4) allow any individual, including a client, student,
6 license holder, or employee, to engage in sexual contact in the
7 massage and bodywork establishment; or

8 (5) allow any individual, including a student, license
9 holder, or employee, to practice massage and bodywork therapies
10 [~~therapy~~] in the nude or in clothing designed to arouse or gratify
11 the sexual desire of any individual.

12 (c) A massage and bodywork establishment shall:

13 (1) properly maintain and secure for each client the
14 initial consultation documents, all session notes, and related
15 billing records; and

16 (2) make available to the department on request the
17 information kept as provided by Subdivision (1).

18 SECTION 28. The heading to Section 455.203, Occupations
19 Code, is amended to read as follows:

20 Sec. 455.203. PRACTICE BY [~~MASSAGE~~] SCHOOL OR INSTRUCTOR AT
21 SCHOOL.

22 SECTION 29. Section 455.203, Occupations Code, is amended
23 by amending Subsections (a), (c), and (d) and adding Subsection (e)
24 to read as follows:

25 (a) A massage and bodywork school must meet the minimum
26 standards of operation established by executive commissioner rule.

27 (c) A massage and bodywork school or massage and bodywork

1 therapies [~~therapy~~] instructor licensed under this chapter shall
2 give each prospective student a notice that clearly states the
3 number of course hours that the student must successfully complete
4 before the student is eligible to hold a massage and bodywork
5 therapist license under this chapter.

6 (d) The notice under Subsection (c) must be given to the
7 prospective student at a time and in a manner that provides the
8 student with a sufficient opportunity to read the notice and, if
9 necessary for understanding and clarity, discuss the notice with
10 massage and bodywork school officials or with the massage and
11 bodywork therapies [~~therapy~~] instructor before:

12 (1) the student signs an enrollment contract; and

13 (2) the massage and bodywork school or the massage and
14 bodywork therapies [~~therapy~~] instructor accepts the student in a
15 course of study.

16 (e) Unless an applicant for a massage and bodywork therapist
17 license meets the requirements of Section 455.156(b)(1), a massage
18 and bodywork therapies instructor or massage and bodywork school,
19 or an owner or operator of a massage and bodywork school as those
20 terms are defined by Section 455.3505, may not certify to the
21 department that the applicant:

22 (1) has completed a course of instruction in massage
23 and bodywork therapies; or

24 (2) is eligible for a license.

25 SECTION 30. Sections 455.204(b) and (c), Occupations Code,
26 are amended to read as follows:

27 (b) Each massage and bodywork establishment must post in

1 plain sight the license for each massage and bodywork therapist who
2 practices in the massage and bodywork establishment.

3 (c) Each massage and bodywork school, massage and bodywork
4 establishment, massage and bodywork therapies [~~therapy~~]
5 instructor, or massage and bodywork therapist shall present the
6 person's license on the request of the department, an authorized
7 representative of the department, or a peace officer.

8 SECTION 31. Section 455.205, Occupations Code, is amended
9 by amending Subsections (a), (b), (c), and (e) and adding
10 Subsection (f) to read as follows:

11 (a) A massage and bodywork therapist may not perform massage
12 and bodywork therapies [~~therapy~~] for compensation or without
13 compensation at or for a sexually oriented business.

14 (b) A massage and bodywork school or a massage and bodywork
15 therapies [~~therapy~~] instructor may not require the successful
16 completion of more course hours than the number of hours required
17 for licensing as a massage and bodywork therapist under this
18 chapter.

19 (c) Unless exempt from the licensing requirements of this
20 chapter, a [A] person who is not licensed under this chapter may
21 not:

22 (1) use the word "massage," "bodywork," or "body rub"
23 on any form of advertising;

24 (2) advertise any service that constitutes massage and
25 bodywork therapies or other massage services; or

26 (3) advertise or represent that the person is the
27 owner or operator of a massage and bodywork establishment or

1 massage and bodywork school [~~unless the person is expressly exempt~~
2 ~~from the licensing requirements of this chapter~~].

3 (e) A person advertising massage and bodywork therapies
4 [~~therapy~~] or other massage services is presumed to be engaging in
5 conduct regulated by this chapter.

6 (f) The owner or operator of a facility that is not licensed
7 as a massage and bodywork establishment may not use or maintain on
8 the premises of the facility any mechanical, electrical, or other
9 equipment designed to provide massage and bodywork therapies or
10 other massage services, unless the person is exempt from the
11 licensing requirements of this chapter.

12 SECTION 32. Section 455.206, Occupations Code, is amended
13 to read as follows:

14 Sec. 455.206. ESTABLISHMENT CHANGE OF LOCATION
15 PROHIBITED. A massage and bodywork establishment may not change
16 the location of the establishment without obtaining a new massage
17 and bodywork establishment license under this chapter.

18 SECTION 33. Sections 455.251(b) and (c), Occupations Code,
19 are amended to read as follows:

20 (b) The department shall revoke the license of a person
21 licensed as a massage and bodywork therapist or massage and
22 bodywork therapies [~~therapy~~] instructor if:

23 (1) the person is convicted of, enters a plea of nolo
24 contendere or guilty to, or receives deferred adjudication for an
25 offense involving prostitution or another sexual offense; or

26 (2) the department determines the person has practiced
27 or administered massage and bodywork therapies [~~therapy~~] at or for

1 a sexually oriented business.

2 (c) The department shall revoke the license of a person
3 licensed as a massage and bodywork school or massage and bodywork
4 establishment if the department determines that:

5 (1) the school or establishment is a sexually oriented
6 business; or

7 (2) an offense involving prostitution or another
8 sexual offense that resulted in a conviction for the offense, a plea
9 of nolo contendere or guilty to the offense, or a grant of deferred
10 adjudication for the offense occurred on the premises of the school
11 or establishment.

12 SECTION 34. Section 455.253, Occupations Code, is amended
13 to read as follows:

14 Sec. 455.253. PROBATION. The department may place on
15 probation a person, including a massage and bodywork school,
16 massage and bodywork therapies [~~therapy~~] instructor, or massage and
17 bodywork establishment, whose license is suspended. If a license
18 suspension is probated, the department may require the person to:

19 (1) report regularly to the department on matters that
20 are the basis of the probation;

21 (2) limit practice to the areas prescribed by the
22 department; or

23 (3) continue or review professional education until
24 the person attains a degree of skill satisfactory to the department
25 in those areas that are the basis of the probation.

26 SECTION 35. Subchapter H, Chapter 455, Occupations Code, is
27 amended by adding Section 455.3505 to read as follows:

1 Sec. 455.3505. DEFINITIONS. In this subchapter:

2 (1) "Operator" means a person who is supervising a
3 massage and bodywork establishment or massage and bodywork school
4 at the time a violation occurs or the establishment or school is
5 inspected. If no person is supervising, then any employee,
6 contractor, or agent of the owner who is present at the
7 establishment or school is the operator.

8 (2) "Owner" includes a person:

9 (A) in whose name a certificate of occupancy has
10 been issued for a massage and bodywork establishment or massage and
11 bodywork school and any person having control over that person; or

12 (B) who operates a massage and bodywork
13 establishment or massage and bodywork school under a lease,
14 operating agreement, or other arrangement.

15 SECTION 36. Section 455.351, Occupations Code, is amended
16 by amending Subsections (a) and (e) and adding Subsections (g),
17 (h), and (i) to read as follows:

18 (a) The attorney general, a district or county attorney, a
19 municipal attorney, or the department may institute an action for
20 injunctive relief to restrain a violation by a person who:

21 (1) appears to be in violation of or threatening to
22 violate this chapter or a rule adopted under this chapter; or

23 (2) is the owner or operator of [~~operating~~] an
24 establishment that offers massage and bodywork therapies [~~therapy~~]
25 or other massage services regulated by this chapter and is not
26 licensed under this chapter.

27 (e) The attorney general, district and county attorney,

1 municipal attorney, and the department may recover reasonable
2 expenses incurred in obtaining injunctive relief or a civil penalty
3 under this section, including court costs, reasonable attorney's
4 fees, investigative costs, witness fees, and deposition expenses.

5 (g) In an injunction issued under this section, a court may
6 include reasonable requirements to prevent further violations of
7 this chapter.

8 (h) If a person continues to violate this chapter or a rule
9 adopted under this chapter after a court has issued an injunction to
10 restrain the violation, a political subdivision may:

11 (1) discontinue utility service provided by the
12 political subdivision to the location where the violation is
13 occurring;

14 (2) require a public utility operating with a
15 franchise to use the public right-of-way of the political
16 subdivision to discontinue utility service to the location where
17 the violation is occurring;

18 (3) revoke the certificate of occupancy for the
19 building in which the violation is occurring; or

20 (4) prohibit the use of streets, alleys, and other
21 means of access controlled by the political subdivision to gain
22 access to the location where the violation is occurring.

23 (i) Notwithstanding Section 22.004, Government Code:

24 (1) a person may not continue the enjoined activity
25 pending appeal or trial on the merits of an injunctive order entered
26 in a suit brought under this subchapter;

27 (2) not later than the 90th day after the date of the

1 injunctive order, the appropriate court of appeals shall hear and
2 decide an appeal taken by a party enjoined under this subchapter;
3 and

4 (3) if an appeal is not taken by a party temporarily
5 enjoined under this article, the parties are entitled to a full
6 trial on the merits not later than the 90th day after the date of the
7 temporary injunctive order.

8 SECTION 37. Section 455.352, Occupations Code, is amended
9 by amending Subsections (a), (b), (c), and (e) and adding
10 Subsection (c-1) to read as follows:

11 (a) A person commits an offense if the person is required to
12 be licensed under this chapter and the person:

13 (1) knowingly violates Section 455.151, 455.159,
14 455.202(b), 455.203(a) or (c), 455.204(b) or (c), or 455.205(b),
15 (c), ~~(d)~~, or (f); or

16 (2) collects a fee or any other form of compensation
17 for massage and bodywork therapies ~~[therapy]~~ without being licensed
18 under this chapter.

19 (b) An owner or operator of a massage and bodywork
20 establishment commits an offense if the person knowingly violates
21 Section 455.151(a), 455.155(d), 455.202(a), 455.204(b) or (c), or
22 455.205(d). An offense under this subsection is a Class B
23 misdemeanor, unless the actor has previously been convicted one or
24 two times of an offense under this subsection, in which event it is
25 a Class A misdemeanor. If the actor has previously been convicted
26 three or more times of an offense under this subsection, the offense
27 is a state jail felony.

1 (c) An owner or operator of a massage and bodywork school
2 commits an offense if the person knowingly violates Section
3 455.151(a), 455.159, 455.203(a) or (c), 455.204(b) or (c), or
4 455.205(b), (c), or (d).

5 (c-1) A massage and bodywork therapies instructor or
6 massage and bodywork school, or an owner or operator of a massage
7 and bodywork school, commits an offense if the person knowingly
8 violates Section 455.203(e). An offense under this subsection is a
9 Class B misdemeanor, unless the actor has previously been convicted
10 one or two times of an offense under this subsection, in which event
11 it is a Class A misdemeanor. If the actor has previously been
12 convicted three or more times of an offense under this subsection,
13 the offense is a state jail felony.

14 (e) Except as provided by Subsections (a-1), (b), and (c-1),
15 if [~~if~~] it is shown at the trial of an offense under this section
16 that the defendant has been previously convicted of an offense
17 under this section, the offense is a Class A misdemeanor.

18 SECTION 38. Chapter 455, Occupations Code, is amended by
19 adding Subchapter I to read as follows:

20 SUBCHAPTER I. MASSAGE AND BODYWORK THERAPIES ADVISORY COMMITTEE

21 Sec. 455.401. DEFINITION. In this subchapter, "committee"
22 means the massage and bodywork therapies advisory committee.

23 Sec. 455.402. COMMITTEE MEMBERSHIP. (a) The massage and
24 bodywork therapies advisory committee consists of nine members,
25 appointed by the commissioner of state health services, who are
26 license holders under this chapter.

27 (b) Appointments to the committee shall reflect the

1 historical and cultural diversity of the inhabitants of this state.

2 (c) Appointments to the committee shall be made without
3 regard to the race, color, disability, sex, religion, age, or
4 national origin of the appointee.

5 Sec. 455.403. DUTIES. (a) The committee:

6 (1) shall advise the department in administering this
7 chapter;

8 (2) may review and comment on proposed rules and
9 amendments to rules adopted under this chapter; and

10 (3) may study or investigate issues relevant to the
11 advisory committee's duties under this chapter.

12 (b) The committee must take into consideration the
13 diversity of practice types within the profession in each action
14 taken by the committee.

15 Sec. 455.404. MEMBERSHIP RESTRICTIONS. (a) In this
16 section, "Texas trade association" means a cooperative and
17 voluntarily joined statewide association of business or
18 professional competitors in this state designed to assist its
19 members and its industry or profession in dealing with mutual
20 business or professional problems and in promoting their common
21 interests.

22 (b) A person may not be a committee member if:

23 (1) the person is an officer, employee, or paid
24 consultant of a Texas trade association in the field of massage and
25 bodywork therapies; or

26 (2) the person's spouse is an officer, manager, or paid
27 consultant of a Texas trade association in the field of massage and

1 bodywork therapies.

2 (c) A person may not be a committee member if the person is
3 required to register as a lobbyist under Chapter 305, Government
4 Code, because of the person's activities for compensation on behalf
5 of a profession related to the operation of the department.

6 Sec. 455.405. TERMS. Members of the committee serve
7 staggered six-year terms. The terms of three members expire on
8 February 1 of each odd-numbered year.

9 Sec. 455.406. GROUNDS FOR REMOVAL. (a) It is a ground for
10 removal from the committee that a member:

11 (1) does not have at the time of the member's
12 appointment to the committee the qualifications required by Section
13 455.402;

14 (2) does not maintain during service on the committee
15 the qualifications required by Section 455.402;

16 (3) is ineligible for membership under Section
17 455.404;

18 (4) cannot, because of illness or disability,
19 discharge the member's duties for a substantial part of the member's
20 term; or

21 (5) is absent from more than half of the regularly
22 scheduled committee meetings that the member is eligible to attend
23 during a calendar year without an excuse approved by a majority vote
24 of the committee.

25 (b) The validity of an action of the committee is not
26 affected by the fact that it is taken when a ground for removal of a
27 member of the committee exists.

1 (c) If a member of the committee has knowledge that a
2 potential ground for removal of another member exists, the member
3 shall notify the presiding officer of the committee of the
4 potential ground. The presiding officer shall then notify the
5 commissioner of state health services that a potential ground for
6 removal exists. If the potential ground for removal involves the
7 presiding officer, the member shall notify the commissioner of
8 state health services that a potential ground for removal exists.

9 Sec. 455.407. REIMBURSEMENT. A member is entitled to
10 reimbursement for expenses as provided by the General
11 Appropriations Act.

12 Sec. 455.408. PRESIDING OFFICER. (a) Not later than the
13 30th day after the date the commissioner of state health services
14 appoints new committee members, the commissioner of state health
15 services shall designate a presiding officer. The presiding
16 officer serves at the pleasure of the commissioner of state health
17 services.

18 (b) The committee may appoint additional officers as
19 necessary.

20 Sec. 455.409. MEETINGS. The committee shall meet subject
21 to the call of the commissioner of state health services.

22 Sec. 455.410. TRAINING. (a) A person who is appointed to
23 and qualifies for office as a member of the committee may not vote,
24 deliberate, or be counted as a member in attendance at a meeting of
25 the committee until the person completes a training program that
26 complies with this section.

27 (b) The training program must provide the person with

1 information regarding:

2 (1) this chapter and the programs, functions, rules,
3 and budget applicable to this chapter;

4 (2) the results of the most recent formal audit of the
5 department;

6 (3) the requirements of laws relating to open
7 meetings, public information, administrative procedure, and
8 conflicts of interest; and

9 (4) any applicable ethics policies adopted by the
10 executive commissioner or the Texas Ethics Commission.

11 (c) A person appointed to the committee is entitled to
12 reimbursement, as provided by the General Appropriations Act, for
13 the travel expenses incurred in attending the training program
14 regardless of whether the attendance at the program occurs before
15 or after the person qualifies for office.

16 SECTION 39. Section 125.0015(a), Civil Practice and
17 Remedies Code, is amended to read as follows:

18 (a) A person who maintains a place to which persons
19 habitually go for the following purposes and who knowingly
20 tolerates the activity and furthermore fails to make reasonable
21 attempts to abate the activity maintains a common nuisance:

22 (1) discharge of a firearm in a public place as
23 prohibited by the Penal Code;

24 (2) reckless discharge of a firearm as prohibited by
25 the Penal Code;

26 (3) engaging in organized criminal activity as a
27 member of a combination as prohibited by the Penal Code;

1 (4) delivery, possession, manufacture, or use of a
2 controlled substance in violation of Chapter 481, Health and Safety
3 Code;

4 (5) gambling, gambling promotion, or communicating
5 gambling information as prohibited by the Penal Code;

6 (6) prostitution, promotion of prostitution, or
7 aggravated promotion of prostitution as prohibited by the Penal
8 Code;

9 (7) compelling prostitution as prohibited by the Penal
10 Code;

11 (8) commercial manufacture, commercial distribution,
12 or commercial exhibition of obscene material as prohibited by the
13 Penal Code;

14 (9) aggravated assault as described by Section 22.02,
15 Penal Code;

16 (10) sexual assault as described by Section 22.011,
17 Penal Code;

18 (11) aggravated sexual assault as described by Section
19 22.021, Penal Code;

20 (12) robbery as described by Section 29.02, Penal
21 Code;

22 (13) aggravated robbery as described by Section 29.03,
23 Penal Code;

24 (14) unlawfully carrying a weapon as described by
25 Section 46.02, Penal Code;

26 (15) murder as described by Section 19.02, Penal Code;

27 [~~or~~]

1 (16) capital murder as described by Section 19.03,
2 Penal Code; or

3 (17) massage and bodywork therapies or other massage
4 services in violation of Chapter 455, Occupations Code.

5 SECTION 40. Section 455.1572, Occupations Code, is
6 repealed.

7 SECTION 41. The legislature finds that a massage and
8 bodywork establishment is a highly regulated business.

9 SECTION 42. Not later than December 1, 2007, the executive
10 commissioner of the Health and Human Services Commission shall
11 adopt any rules that are necessary to implement Chapter 455,
12 Occupations Code, as amended by this Act.

13 SECTION 43. A person engaged in bodywork, somatic therapy,
14 or hydrotherapy is entitled to a massage and bodywork therapist
15 license without meeting the requirements of Sections
16 455.156(b)(1), (2), and (3), Occupations Code, as amended by this
17 Act, if the person:

18 (1) files an application for a massage and bodywork
19 therapist license with the Department of State Health Services not
20 later than February 28, 2008;

21 (2) submits evidence that the person has obtained a
22 certification in bodywork, somatic therapy, or hydrotherapy issued
23 by a national organization that the Department of State Health
24 Services determines has education and examination requirements
25 similar to the requirements for a massage therapist license under
26 Chapter 455, Occupations Code, on January 1, 2007;

27 (3) submits evidence acceptable to the Department of

1 State Health Services that the person has engaged in bodywork,
2 somatic therapy, or hydrotherapy in this state as a profession for
3 the three years preceding the date the person files the
4 application; and

5 (4) meets the other requirements for a massage and
6 bodywork therapist license under Chapter 455, Occupations Code, as
7 amended by this Act.

8 SECTION 44. (a) Except as provided by Subsection (b) of
9 this section, the changes in law made by this Act to Section
10 455.156, Occupations Code, apply only to a license applicant who
11 enrolls in a massage and bodywork therapist training program for
12 the first time on or after August 1, 2008. An applicant who
13 enrolled in a massage and bodywork therapist training program for
14 the first time before that date is governed by the law in effect
15 immediately before August 1, 2008, and the former law is continued
16 in effect for that purpose.

17 (b) The change in law made by this Act by the deletion of
18 former Section 455.156(b)(1)(B), Occupations Code, applies only to
19 an application for a license filed on or after August 1, 2008. A
20 license application filed before August 1, 2008, is governed by the
21 law in effect at the time the application is filed, and the former
22 law is continued in effect for that purpose.

23 (c) The change in law made by this Act to Section 455.351,
24 Occupations Code, regarding a violation of Chapter 455, Occupations
25 Code, or a rule adopted under that chapter, applies only to a
26 violation that occurs on or after the effective date of this Act. A
27 violation that occurs before the effective date of this Act is

1 governed by the law in effect on the date the violation occurred,
2 and the former law is continued in effect for that purpose.

3 SECTION 45. (a) The change in law made by this Act to
4 Section 455.352, Occupations Code, applies only to an offense
5 committed on or after the effective date of this Act. For purposes
6 of this section, an offense is committed before the effective date
7 of this Act if any element of the offense occurs before the
8 effective date.

9 (b) An offense committed before the effective date of this
10 Act is governed by the law in effect when the offense was committed,
11 and the former law is continued in effect for that purpose.

12 SECTION 46. As soon as practicable after the effective date
13 of this Act, the commissioner of state health services shall
14 appoint the initial members of the advisory committee under Section
15 455.106, Occupations Code, as added by this Act.

16 SECTION 47. (a) Except as provided by Subsection (b) of
17 this section, this Act takes effect September 1, 2007.

18 (b) The changes in law made by this Act to Section
19 455.156(b), Occupations Code, take effect August 1, 2008.